DOCUMENT RESUME

ED 214 372 FL 012 818

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TITLE Linguistic Theory and the Study of Legal and Bureaucratic Language. Document Design Project, Technical Report No. 16.
INSTITUTION American Institutes for Research in the Behavioral Sciences, Washington, D.C.
SPONS AGENCY National Inst. of Education (DHEW), Washington, D.C.
REPORT NO AIR-75003-9/81-TR
PUB DATE Sep 81
CONTRACT 400-78-0043
NOTE 41p.

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Courts; Diachronic Linguistics; Government Publications; *Grammar; Language Research; *Language Usage; Laws; Lawyers; *Legislation; *Linguistic Theory; *Sociolinguistics
IDENTIFIERS *Bureaucratic Language; *Legal Language

ABSTRACT

This paper studies legal language from three perspectives. First, legal language is defined as the variety of English that lawyers, judges, and other members of the legal community use in the course of their work. In a second section, it reviews descriptions of legal language by lawyers, linguists, and social scientists. These studies indicate that legal language is marked by distinctive features at the levels of discourse, syntax, and lexicon. It appears to violate many rules of ordinary usage; it shares with bureaucratic language many unusual grammatical and syntactic features. On the lexical level, it uses common words with uncommon meanings, as well as jargon and words whose intent is to achieve either vagueness or extreme precision. Finally, four areas of linguistic theory are examined to determine how these areas relate to legal and bureaucratic language. Historical linguistics, grammatical theories, sociolinguistics, and linguistic meta-theories are considered as areas that could illuminate and clarify legal language. These areas could also be enriched by the study of this variety of exceptional language. (AMH)

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ED214372

AIR-75003-9/81-TR

DOCUMENT DESIGN PROJECT

Technical Report No. 16

Linguistic Theory and the Study of Legal and Bureaucratic Language

Veda R. Charrow

A Product of the Document Design Project funded by the National Institute of Education, Washington, D.C.
Contract No. NIE-400-78-0043

U.S. DEPARTMENT OF EDUCATION
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with Carnegie Mellon University and Siegel & Gale, Inc.

This report is part of the work being done under contract #400-78-0043 of the National Institute of Education. The project officer is Dr. Candace Miyamura of the Teaching and Learning/ Reading and Language Group. This report does not necessarily reflect the views of the funding agency.

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Task 3: To develop courses on writing and design for graduate students and undergraduates.

If you have questions or comments on this report or on other work of the Document Design Project, contact Dr. Janice C. Redish, Director, The Document Design Project, AIR, (202) 342-5071.

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LINGUISTIC THEORY AND THE STUDY OF LEGAL AND BUREAUCRATIC LANGUAGE *

The purpose of this paper is to examine some aspects of linguistic theory in light of the real-world phenomena of legal and bureaucratic language. It is, on the one hand, an attempt to briefly characterize legal and bureaucratic language from a linguistic point of view. It is also an attempt to characterize what it is that linguists know about language that would allow them to analyze, describe, and explain legal and bureaucratic language and other exceptional varieties of language. But, more importantly, it is an attempt to find the gaps in the linguist's meta-linguistic competence and performance--areas where the science of linguistics lacks the pieces of theory that would allow us to better understand these varieties of language, or where we as linguists have not traditionally had the interest or impetus to study real-world language use. And finally it is an attempt to demonstrate how an understanding of legal and bureaucratic language can contribute to building theory in historical linguistics, grammar, sociolinguistics, and linguistic meta-theory.

* * * * * * * *

Legal and bureaucratic language is a worthy area of study for theoretical linguists. In this paper, I will talk about the work that linguists and other social scientists have already done in the area of legal and bureaucratic language. On the basis of studies

*To be published in L. Obler and L. Menn (Eds.), Exceptional Language and Linguistic Theory, in preparation.

that have been conducted, and several linguists' experience in working with legal and bureaucratic language, I will provide a brief description of these varieties of English. I will point out how various aspects of linguistic theory--historical linguistics, theories of grammar, sociolinguistic theories, and theories of language competence and performance--have contributed to our understanding of language use in the real world of law and government. I will also point out gaps in our theoretical knowledge--areas where linguistic theory has not had anything useful to say to the investigator of real-world language use, and areas that theoretical linguists have not yet tackled. I will attempt to point out areas where the study of real-world language can be used to find gaps and flaws in linguistic theory, and a few areas where an understanding of legal and bureaucratic language is potentially useful as a metric for choosing among competing theories of grammar.

An Introduction to Legal and Bureaucratic Language

Legal language ("legalese"), as I use the term in this paper, is the variety of English* that lawyers, judges, and other members of the legal community use in the course of their work. It is primarily a written code, although there are specific instances of spoken "legalese"--particularly in court proceedings. Legalese is used in all types of legal documents-- wills, leases, contracts, loan forms, briefs, memoranda, statutes, laws--as well as in legal opinions, law school textbooks, and casebooks. The following is an example of typical legalese:

*Other languages have legalese, as well. However, for the purposes of this paper, I am limiting my discussion to English legalese.

> You are hereby commanded to take Larry Litigant if he shall be found in your bailiwick, and keep him safe so that you have his body before the Circuit Court of this County now holding at the town of Upper Marlboro, in this County, immediately to answer unto the plaintiff on her petition and rule to seek alimony and support payments and bond in the amount of _____ dollars ($) pursuant to the provisions of the law of the State of Maryland. Fail not at your peril, and have you then and there this Writ.

As I have explained in greater detail in previous descriptions of legal language (Charrow & Crandall, 1978; Charrow, Crandall & Charrow, in press), it is unclear how best to characterize legalese: it is not a register, as only a small proportion of the population controls it, and it is acquired only through a very special type of schooling. It also differs significantly from normal usage. It is more than a professional jargon, as it contains its own peculiar syntactic constructions. However, it may not actually qualify as a dialect of English, because most of its odd syntactic structures are not productive, and because it is not acquired in a "natural" manner.

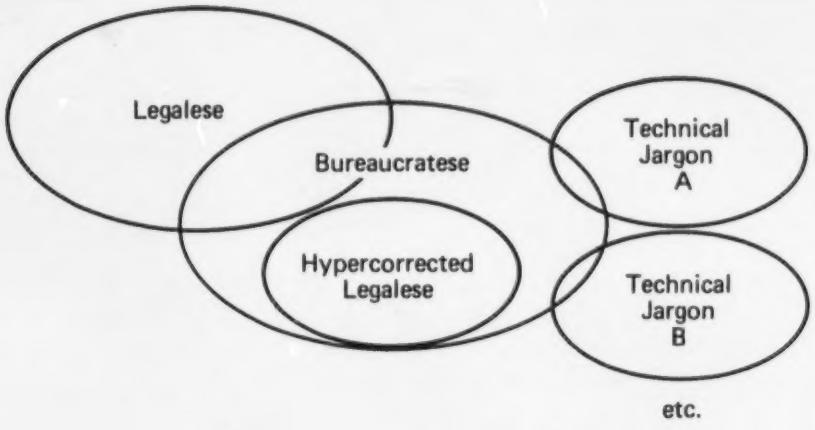
Bureaucratic language, as I and others have characterized it elsewhere (Charrow, in press; Redish, in press), is similar to legal language--in fact, it is based on legal language. It is the variety of English which is found in the documents (and less often the oral pronouncements) which emanate from government agencies, and which has the force of federal and state statutes behind it. Bureaucratese (also known as "gobbledygook") is used in regulations and their associated documents, in government forms (for Medicaid, education grants, Social Security, housing, small businesses, etc.)

and in guidelines, brochures, and other explanatory material put out by government agencies. The following is an example of bureaucratese from an immigration form:

> If you are the spouse or unmarried minor child of a person who has been granted preference classification by the Immigration and Naturalization Service or has applied for preference classification, and you are claiming the same preference classification, or if you are claiming special immigrant classification as the spouse or unmarried child of a minister of religion who has been accorded or is seeking classification as a special immigrant, submit the following . . . (INS Form I-485).

Bureaucratese shares many of the basic characteristics of legalese, but it also contains features of its own that make it identifiable as a "sub-variety" of legalese--notably, a specialized lexicon and a few characteristic grammatical constructions. It is also possible that some examples of bureaucratese are actually hypercorrected legalese; these may be the pieces that end up being ridiculed by "guardians of the public tongue" such as Edwin Newman and William Safire.

The diagram on the next page schematizes the possible relationship between legal and bureaucratic language and between bureaucratese and the various technical vocabularies it borrows from time to time (in regulations affecting specific industries, etc.):



Both legal and bureaucratic language appear to span continua--from almost "normal" formal usage to highly complex varieties that differ substantially from normal formal usage.

The Formal Study of Legal and Bureaucratic Language

Non-lawyers have been criticizing legal language for hundreds of years. But lawyers were the first to critically and objectively examine their sublanguage. Mellinkoff (1978), to give the best example, describes legal language, traces its development, explains how it differs from ordinary usage, and describes some of the problems it creates. Nonetheless, like others who attempt to describe varieties of language but who lack specific training in linguistics, the legal scholars who have described legal language lack both the vocabulary and the specialized knowledge to present a thorough and fully explanatory analysis of legalese. Mellinkoff, for example, has identified nine characteristics of legal language:

1. Frequent use of common words with uncommon meanings (using action for lawsuit, of course for as a matter of right, etc.)

2. Frequent use of Old and Middle English words once in use but now rare (aforesaid, whereas, said and such as adjectives, etc.)

3. Frequent use of Latin words and phrases (in propria persona, amicus curiae, mens rea, etc.)

4. Use of French words not in the general vocabulary (lien, easement, tort, etc.)

5. Use of terms of art--or what we'd call jargon (month-to-month tenancy, negotiable instrument, eminent domain, etc.)

6. Use of argot--ingroup communication or "professional language" (pierce the corporate veil, damages, due care)

7. Frequent use of formal words (Oyez, oyez, oyez, which is used in convening the Supreme Court; I do solemnly swear; and the truth, the whole truth, and nothing but the truth, so help you God)

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8. Deliberate use of words and expressions with flexible meanings (extraordinary compensation, reasonable man, undue influence)

9. Attempts at extreme precision (consider the following formbook general release):

> Know ye that I, _____, of _____, for and in consideration of _____ dollars, to me in hand paid by _____, do by these presents for myself, my heirs, executors, and administrators, remise, release, and forever discharge, _____ of _____, his heirs, executors, and administrators, of and from any and all manner of action or actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, executions, claims, and demands whatsoever, . . ." (pp. 11-23)

This classification of the features of legal language, although revealing, is hardly complete; it does not cover legal sentence structure or discourse structure. It is also not systematic, from a linguistic point-of-view: semantic, syntactic, and sociolinguistic categories overlap and are considered in the same light.

Most other descriptions of legal language by lawyers are not even as sophisticated as Mellinkoff's. Rodell for example, calls legal language "high class mumbo jumbo" and elaborates on this by saying merely that there are only two things wrong with most legal writing: style and content (cited in Goldfarb, 1978). Humorous, perhaps, but hardly an objective, systematic analysis.

Linguists and other social scientists have become interested in legal language only in the last few years. They have conducted systematic studies of various aspects of legal language, and the language used in legal situations, which have yielded useful information about the characteristics and functions of legal and bureaucratic language.

Kroll (1975) applied sociolinguistic principles and theories of speech acts to an instance of cross-examination in the courtroom. She analyzed the testimony of a witness (an undercover policewoman) from the point of view of Robin Lakoff's "contextual change," and other theories of denotation and connotation. Among other things, Kroll pointed out that courtroom language (but not necessarily legalese) does not follow the rules of ordinary conversation.

Williams (1976) examined how lawyers and judges in conspiracy trials treat opaque contexts. He noted that linguistic theory can be extremely useful for solving legal problems involving language.*

Labov (1975) actually applied linguistics to a real-world problem involving legal language. At the request of a lawyer for a group of steelworkers, he investigated the relative comprehensibility and coerciveness of a cover letter and a consent agreement that the management of the steel industry had sent to steelworkers as the result of a class action suit.

*Heath (1979) has reported on other linguistic studies involving legal language.

In general, however, there have been very few empirical studies of legal language by linguists. The first such study was Charrow and Charrow's (1978, 1979, 1980) study of the comprehensibility of standard jury instructions. Using a psycholinguistic methodology and discourse analysis, the investigators not only demonstrated that legal language, as embodied in standard jury instructions, was difficult for lay people (jurors) to understand, but they isolated the syntactic, lexical, and discourse features that appeared to obstruct comprehension. Charrow and Charrow also demonstrated that if the jury instructions were rewritten using principles derived from linguistic theories of syntax and discourse structure, speech acts, and conversational rules, comprehension could be increased dramatically.

As linguists' interest in legal and bureaucratic language was slowly growing, other social scientists were finding legal language a fertile area for investigation and theory building.

Experimental psychologists such as Harris (1975) and Loftus (1975; Loftus & Palmer, 1974) have empirically examined aspects of legal language involving presuppositions and inferences (e.g., leading questions, eyewitness testimony).

Anthropologists, notably O'Barr, et al. (1975), O'Barr and Conley (1976), have conducted a series of studies of speech styles in the courtroom, which showed, among other things, that witnesses' speech styles manifesting indices of "powerlessness" (hedging; hypercorrected legalese, etc.) tended to be regarded as less credible than more "powerful" speech styles.

Sociologists--Danet (1980a); Danet, et al. (1980)--have studied sociological aspects of legal language, such as lawyers' questioning styles in the courtroom, and the differences in the use of certain crucial descriptions by the prosecution as opposed to the defense. These and other studies have fed into a growing theory of the social role of the law and legal language (Danet, 1980b).

In the area of bureaucratic language, there have been a very few descriptive studies (Charrow & Redish, 1980; Charrow, in press) and a few empirical studies of one or two features of it (e.g., Holland & Rose, 1980; Swarts, et al., 1980; Rose & Cox, 1980; Holland, 1981; Redish, Felker, & Rose, in press).

Characteristics of Legal and Bureaucratic Language

The various studies of legal language by linguists and other social scientists yield an interesting if incomplete description of legal language. From these studies, it appears that legal language is marked by the following features:

At the discourse level. At the discourse level, legal and bureaucratic language appear to violate many rules of ordinary usage. As Danet (1980) notes, legal documents often avoid pronouns, resulting in violations of linguistic rules of anaphora both within sentences and between them. In leases, contracts, and insurance policies, clauses are set out in numbered lists, which do not indicate the relative importance or logical sequence of the ideas (Shuy & Larkin, 1978; Charrow, in press; Redish, in press).

In addition, bureaucratic documents, in particular, often lack a context--information that would allow readers to relate the information in the document to their own experience, or that would alert them to the fact that what they are about to read is not connected to any of their pre-existing notions.

Some instances of legalese--jury instructions are a good example--contain the same information repeated in different sentence structures and words. Charrow and Charrow (1979) found that when subject-jurors were not alerted to the fact that they were hearing the same information twice, they thought the repeated information was saying something different, even contradicting the original statement. In short, legal language, at the discourse level, appears to often violate Grice's Maxim of Quantity.

Charrow (in press) has pointed out that bureaucratic discourse is often structured very differently from everyday discourse, resulting in documents that do not meet the needs of their audiences. Writers of regulations and other legal/bureaucratic documents often organize these documents from the point-of-view of the writer, making them illogical from the point-of-view of the reader. Thus, regulations which should be reference documents for the reader are often written as historical documents, memorializing the policy decisions and procedures of the government agency.

At the syntactic level. Results of the various studies referred to above indicate that bureaucratic and legal written and oral language share many unusual grammatical and syntactic features. Charrow and Charrow (1979) found that standard jury instructions

contain what appear to be an abnormally large number of passives, truncated passives, past participial phrases, nominalizations, multiple negatives, misplaced or intrusive phrases, parallel structures, unusually long sentences, and unusual and complex embeddings.*

In addition, bureaucratic language--especially in forms and regulations--appears to have an unusually large number of complex and ambiguous conditions (Charrow, in press; Charrow & Redish, 1980; Holland, 1981). For example, (from an IRS form),

> Did you pay more than half the cost of keeping up a home in the U.S. in which you lived and which for the entire year (except for temporary absences for vacation, school, etc.) was also the home of (1) your child who was under 19 years of age or a full-time student, OR (2) your dependent child who is disabled (see pages 7 and 8)?

Some quasi-syntactic features of legal and bureaucratic language (constructions larger than a single word, but smaller than a clause) include <u>doublets</u> such as:

any and all

cease and desist

false and untrue;

*Danet (1980) reports that Crystal and Davy (1979), Shuy and Larkin (1978), Sales et al. (1977), and Gustafsson (1975), among others, have also found these features in their examinations of legal language.

word lists such as:

> A witness who has special knowledge, skill, experience, training, or education in a particular science, profession or occupation;

and unusual prepositional phrases (and clauses), such as those beginning with "absent," "as to," "in the event of," or "until such time as."

Bureaucratic language also contains large numbers of long and complex noun strings, which often serve as the names of programs or institutions (Charrow & Redish, 1980; Charrow, in press). Examples are "health maintenance organization," "Federal Emergency Management Agency (FEMA)." Other bureaucratic noun strings, however, are not names of organizations or programs; they simply appear in the text as though they were completely transparent constructions. For example,

> label accuracy
> health services utilization
> young driver risk-taking research
> prototype crisis shelter development plans
> the FEMA-sponsored host area crisis shelter production planning workbook

At the lexical level. Many of Mellinkoff's categories (see pages 5 and 6 above) were noted by researchers in their studies of

legal language--particularly words of French, Latin, and Old English origin, common terms with uncommon meanings (e.g., "consideration," "assign"), and technical terms--what lawyers call "terms of art" (e.g., "eminent domain," "trespass," "indenture debenture").

Bureaucratic language creates or adopts lexical items that come to be the earmarks of bureaucratic jargon (e.g., "prioritize" and "impact (on)" used as a verb).

In addition, both legal and bureaucratic language use words to achieve either vagueness (e.g., "all the rights and remedies"; "as soon as is practicable") or extreme precision (e.g., "no animal of the dog kind"; "release and forever discharge _____, his heirs, executors and administrators, of and from any and all manner of action or actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, . . ."

How Legal and Bureaucratic Language Can Contribute to Four Areas of Linguistic Theory

In deciding how best to approach the topic of linguistic theory and legal/bureaucratic language, I found myself asking the questions: What is it that linguists know (meta-linguistic competence, if you will) that makes it possible for us to study, understand, and describe legal and bureaucratic language? What kinds of theories do we bring to bear when investigating these varieties of exceptional language? And, on the other hand, how can

the study of legal and bureaucratic language highlight the gaps in these theories and help fill them in?

There are four main areas of linguistic theory that relate to, and that, in turn, can benefit from, a study of legal and bureaucratic language:

I. Historical linguistics--theories of how languages develop and change.

II. Grammatical theories--theories of the structure of discourse; grammatical "rules."

III. Sociolinguistic theories--theories of language use for different societal purposes.

IV. Linguistic meta-theory--philosophical theories of why human beings develop language, theories of linguistic competence and performance, and theoretical principles of human communication.

In this section, I will briefly discuss some of the ways in which each of these areas of linguistic theory relates to legal and bureaucratic language. I will also bring up as yet unanswered questions about these varieties of English that theoreticians might be interested in investigating.

I. Historical linguistics. To understand how legal language got to be the way it is, it is necessary to understand normal processes of development and change in language. It is also useful to understand the types of grammatical and lexical changes and pidginization processes that languages can undergo over time or as a result of historical accidents. It is useful to know these things in order to be able to trace the (rather well-documented) development of legal language through the centuries. In doing so, one finds that the factors that influenced the evolution of legal language into the unique variety of English that it is are somewhat different from (or perhaps more specific than) the factors that cause ordinary language to evolve.

The factors influencing the evolution of legal language appear to be legal-historical, political, and jurisprudential--in addition to the more usual types of historical and sociological factors that bring about change in ordinary language. Historical linguists would do well to study these factors; their findings might prove useful for describing change in other situations.

As my colleagues and I have discussed elsewhere (Charrow, Crandall, & Charrow, 1981, in press), legal language has had its own historical development, which has paralleled, but has often been independent of, the historical development of the rest of the English language. Legal language has its own sub-processes of change and growth. Thus, while languages change lexically--through normal social processes--by dropping archaic terms, developing new meanings and losing the old meanings of words, the legal sublanguage

develops and changes lexical meaning through legislation and judicial decisions, and because of socio-legal factors (e.g., the use of ritualized language to convey the power of the law; the conservatism of the legal profession, etc.). Where ordinary English has replaced older vocabulary items with newer ones, legal language does not usually replace an older form. Rather, it simply adds the new terms to previously-used terms, creating "doublets" or strings of largely synonymous words. For example,

cease and desist
remise, release, and forever discharge

As French was giving way to English in the courts (which happened much later than it did for ordinary usage), an English word was often added to the French predecessor, producing:

new and novel
false and untrue

Although this process parallelled the fashion, in ordinary usage, of using strings of synonyms for ornament (Mellinkoff, 1978, p. 121), there were different historical reasons for the use of doublets and word strings in legal language--for example, the apparent need to preserve legal force by preserving the legal words that carry the force of the law; the legal need for speakers of both official languages to, at least in theory, understand the language of the law. Furthermore, the use of doublets and word strings has died out in ordinary usage, but it persists in legal language to this day.

Similarly, legal language retains many French, Latin, and archaic English words, such as voir dire, lien, and tort (French); prima facie and habeas corpus (Latin); and writ and aforethought (archaic English). It does so simply because legal language has different sociolinguistic and developmental rules from ordinary English.

The same is true for certain grammatical constructions in legal language. Some are "frozen" forms, which come from grammatical constructions that were either borrowed from French or Latin, or that were brought forward from archaic English. For example,

malice aforethought
fee simple
revoking all wills and codicils by me made

Others, such as the extensive use of the passive voice and multiple negatives, the use of nominalizations rather than clauses, the use of complex conditionals and multiple embeddings, appear to be the result of various legal-historical processes, as well as legal conservatism, tradition, and time constraints, that legitimized the copying of models--forms and "boilerplate."

Some of the characteristics of legal language appear to be the result of a lack of change, and historical linguistics ought to be able to account for lack of change as well as change in a language. But if the process is more complicated than a lack of change, and especially if more is going on, the process bears investigation by historical linguists.

A great deal still remains to be explained regarding the historical development of legal language. It may be worth comparing the changes in legal language to those in ordinary English over several centuries. Was legal language ever closer to ordinary usage, or has it always been just as inaccessible to the lay person? If, at times, legal language was more like ordinary usage, in what ways was it more like, and what were the factors that contributed to this? What factors caused it to move away from ordinary English? Is legal language currently changing? What effect, if any, is the current movement toward simplifying legal documents having on legal language? What are the features of legal language that are the most impervious to change, and why?

Regarding bureaucratic language, which appears to be a sub-variety of legal language, there are also several areas for historical investigation. When, for instance, did bureaucratic language as we know it arise? How has it developed and changed? Have noun strings, for example, always been an earmark of bureaucratese?

Once we have answers to some of these questions, it would be time to look at theories of language change, to see how well (if at all) they accommodate the development of exceptional varieties of language. It would be worth knowing whether theories of language change can take into account <u>any</u> varieties of language that are controlled by institutions (e.g., advertising language), and whether there is any place in the theory for semantic change--or the lack of it--by judicial or governmental fiat.

II. Grammatical theories. It is not a direct connection that links grammatical theories with the study of legal and bureaucratic language. After all, theories of grammar are based on competence, not performance. Theoretical linguists do not usually concern themselves with esoteric varieties of English or with applications of linguistics to language use in the "real" world.

Nonetheless, grammatical theories and rules can be helpful to those who study legal and bureaucratic language by pointing to particularly interesting constructions or potential trouble spots in these varieties of English. And whatever school of linguistic theory (or whatever linguistic heresy) one chooses to follow, it is necessary to know about linguistic rules such as passivization and nominalization in order to be able to adequately describe what is going on in legal and bureaucratic language. It is necessary to be able to identify and explain such constructions to lawyers and bureaucrats, in order to counter their tendency to use those constructions to the exclusion of all others.

On the other hand, a study of legal and bureaucratic language can be useful to linguistic theoreticians. Theoretical linguists are constantly on the lookout for examples or counter-examples to support or cast doubt on some piece of grammatical theory. However, they rarely, if ever, look for examples in these common varieties of exceptional language. Perhaps linguistics would look slightly different if theoretical linguists did not limit their corpus of examples to standard constructions in the standard language.

An understanding of legal and bureaucratic language can also be useful for choosing between competing linguistic theories. For example, Ross's (1973) argument for a continuum--"squishy boundaries"--between nouns and sentences is a far more useful explanation of the phenomenon of nominalization in legal and bureaucratic language than Chomsky's lexical treatment of derived nominals. Lawyers and bureaucrats do, in fact, change the verbs in subordinate clauses into static, nominal phrases, to make a sentence more remote and abstract, and to avoid placing or taking responsibility. And while linguistic theory does not routinely take into account what people actually do, it probably should start doing so, if only to avoid the embarrassment of a possible "phlogiston theory" in linguistics.* In any case, no matter which theory ultimately prevailed (cf. Newmeyer, 1980, p. 91, p. 159), Ross's explanation is far more intuitively satisfying and far more useful than Chomsky's for explaining what really is going on in legalese and bureaucratese.

A study of the problems in legal and bureaucratic language might stimulate the development or the reinstatement of different types of grammatical or semantic theories. So, for example, although case grammar has been dormant for many years (cf. Fillmore, 1968) a case grammar approach can explain certain phenomena in legal and bureaucratic language better than TG: It is particularly useful

*A case in point is Miller's (1962) report of Mehler's psycholinguistic experiment confirming the relative complexity of Negative, Passive and Question transformations. The experiment could not be successfully replicated, and subsequently--although not consequently, we are assured--the theory itself and transformational rules underwent radical changes.

for convincing bureaucrats and lawyers that their truncated passives lack important information--the identity of the AGENT or the INSTRUMENT. Perhaps theoretical linguists will be moved to develop still other theories once they become acquainted with these exceptional varieties of language.

For psycholinguistic researchers, legal and bureaucratic language provide potential areas for empirical research and model-building. Empirical research, in turn, helps to confirm (or disconfirm) the psychological validity of some theoretical constructs. Empirical studies could help to explain how legal and bureaucratic language differ from ordinary usage, and help to predict where lay persons will have difficulties in processing these varieties, but few psycholinguistic studies of legal language have been performed, and there have been none of bureaucratic language.

The psycholinguistic research that has been done has focussed on grammatical constructions that happen to also be features of legal and bureaucratic language (cf. Just & Carpenter, 1971; Just & Clark, 1973; Wason, 1962, on negatives and multiple negatives). In attempting to discover the linguistic features of jury instructions that caused subject-jurors difficulty in paraphrasing the instructions, Charrow and Charrow (1979) followed clues from psycholinguistic studies of individual constructions, which ultimately led to their isolating nine linguistic constructions typical of legal language which appeared to have the greatest (negative) effects on comprehension.

There are a great many questions regarding legal and bureaucratic language that grammatical theories do not answer, and that psycholinguists have not investigated. For example, is an active sentence truly more basic--in some theoretical sense--than its passive counterpart? Is there research to show how much more often active forms are used in ordinary discourse than passives?

On the other hand, theoreticians should deal with the possibility that grammatical well-formedness may be a matter of degree--that the length, awkwardness, or unusualness of a construction may affect our judgments of the well-formedness of the construction. For example, in the following sentence from a USDA regulation, where does length and awkwardness end and ungrammaticality begin?

> Order. (a) No handler shall ship any container of papayas (except immature papayas handled pursuant to S928.152 of this part):
>
> (1) During the period January 1 through April 15,1980, to any destination within the production area unless said papayas grade at least Hawaii No. 1, except that allowable tolerances for defects may total 10 percent: Provided, That not more than 5 percent shall be for serious damage, not more than 1 percent for immature fruit, and not more than 1 percent for decay: Provided further, such papayas shall individually weigh not less than 11 ounces each.

III. Sociolinguistics. Sociolinguistics is particularly relevant to the study of legal and bureaucratic language, since legal language, especially, embodies and reflects the power of law over society. Some of this function is reflected in the use of performatives in legalese; some is reflected in the ritualistic

quality of much legalese--the use of rhythm, of parallel structures, of archaic incantations. For example,

> Failure of recollection is a common experience, and innocent misrecollection is not uncommon. (From California Jury Instructions--Civil--Book of Approved Jury Instructions)

OR

> Oyez, oyez, oyez! Court is now in session!

OR

> Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

In fact, as has been noted elsewhere (Charrow & Crandall, 1978; Charrow, Crandall & Charrow, 1981, in press; Danet, 1980b) legal language is very much like religious language in certain specific situations, and it serves a similar function: to impress ordinary people with the power, importance, and seriousness of the law. In a way, the performative function of legal language is also a magical function: by using the proper legal formula under the right set of circumstances, saying something is so makes it so:

> By the power invested in me, (under _____), I now pronounce you husband and wife.
>
> I hereby give, devise, and bequeath . . .

As Charrow, Crandall & Charrow noted, it is not necessary for the lay person to understand, or even know about, a given law in order to be governed by it. The legal maxim, "Ignorance of the law is no excuse" makes it quite clear that it is the existence of a law--the fact that it has been proclaimed or written somewhere, and not repealed--that gives it its force.

Legal language serves other sociolinguistic functions. As Crandall and I have explained (Charrow & Crandall, 1978), legalese serves to establish and maintain solidarity among its users, and to keep out outsiders. It is also a prestigious variety of English. Those who are fluent in it--lawyers and judges--have a great deal of power and influence, and (generally) command respect. In fact, we have argued that legalese is more like a dialect than a jargon, in that its history, its structure, its social functions, and its method of acquisition are far more complex than those of jargons, and are more like those of dialects.

Many of the sociolinguistic properties and processes of legal language also apply to bureaucratic language. Bureaucratic language does not have as much magic as legal language, and hence lacks some of the rhythmic and ritualistic features of legalese. However, it does share much of the power of legal language. Government regulations are meant to be followed; there are often severe penalties for not doing so. Furthermore, as Charrow (in press) has explained, because the government bureaucracy has great power over large numbers of people, bureaucrats usually do not have to listen to non-bureaucrats at all. Outsiders must deal with the government on the government's terms. This creates a closed communication system, with strange usages that may be unconstrained by normal rules of conversation, discourse structure, or even grammar (e.g., "This impacts (on) the program in the following way."). Thus, it may be that the separating function of bureaucratic language (i.e., keeping outsiders out) is more important than its unifying function. This would be ironic, indeed, in that if people cannot understand

bureaucratese, they will not be able to comply with what the bureaucracy wants. And since most people do not have the same respect for the government as they do for the law, they will probably be less likely to try to comply.

In spite of many people's negative feelings about the bureaucracy and bureaucratic language, bureaucratic language is still a prestige variety of English. Many people do consider it valuable, and worth emulating. As Charrow (in press) points out, the news media often latch onto bureaucratic jargon and use it as their own, and this contributes to its spread and further enhances its prestige.

Aside from these observations, there have been relatively few sociolinguistic studies of legal or bureaucratic language, and sociolinguistic theories do not deal very well with phenomena such as legal and bureaucratic language. For example, sociolinguistic categories exist that take into account registers, jargons, and dialects. But none of these categories adequately describes legal language. Charrow and Crandall (1978) make a case for legalese as a dialect of English, but only by stretching somewhat the accepted sociolinguistic definitions of dialect. We need categories to take exceptional varieties of language into account.

The sociolinguistic concept of continuum along which the registers or the varieties of a language fall is potentially useful for explaining the variations in legal language. But it cannot be used "as is." Danet (1980b), for instance, has created a matrix--a

"typology of situations in which Legal English is used, by style and mode," which ranges from "frozen" forms used in certain legal documents to casual forms used in lawyer-lawyer conversations.

Heath (1981--personal communication) has looked at legalese and other professional sublanguages from a somewhat broader sociolinguistic perspective. She has postulated that there are sociolinguistic processes of "complexification" and "simplification," and that professional languages are manifestations of a universal tendency toward complexification in languages (which is sometimes offset by an opposing tendency toward simplification).

Redish (personal communication) has suggested that the situation is more complex than Heath has postulated; that there are ordinary complexification processes that create formal registers, but that there are other processes above and beyond these that lead to the creation of legal language (and perhaps, to a lesser extent, other professional jargons). This is supported by the fact that many well-educated people who command the formal registers of English do not have a productive or receptive command of legalese.

There are still sociolinguistic aspects of legal and bureaucratic language that remain to be discovered and explained. Danet (1980) touches on some of these in her excellent (1980) article. For example, how do lawyers learn to become competent in legal language? How do bureaucrats become competent in bureaucratic language? In what order are different features of legalese acquired? Which aspects are easier or more difficult to acquire,

and why? What are the significant differences between legal language and religious language?

Once we have some of the answers to these questions, we will clearly need more theoretical work and more theory-building in sociolinguistics to take other varieties of exceptional language into account.

IV. Linguistic meta-theory. In order to understand the phenomena of legal and bureaucratic language, and some of the problems they cause for non-lawyers, it is useful to have some understanding of linguistic meta-theories. And it may turn out to be equally useful to linguistic meta-theory to understand the phenomena of legal and bureaucratic language. Although Chomsky (1959) probably did not intend the concepts of competence and performance to apply to anything but the abstract device (in infants) for acquiring a first language, one could argue that the theory should be expanded to cover language acquisition throughout life. Looking at legal and bureaucratic language, and their acquisition processes, there certainly appears to be evidence that, in a sense, as human beings we cannot help but create sublanguages. Even once we have acquired our native language(s), the mechanism does not entirely shut off. We go on creating and acquiring dialects, jargons, registers, and other subsystems well into maturity (and perhaps senility). We can similarly argue that it is our linguistic competence that allows us, given infinite time and patience, to make sense of the very complex syntactic structures of legalese.

On the other hand, it is certainly plausible that only performance constraints make legal and bureaucratic language difficult for many people to deal with. Aside from law students, attorneys, and judges, who have been specifically trained in legalese, who are constantly exposed to it, and who depend upon it for their livelihoods, most people do not have the time, patience, memory capacity, or specific vocabulary to tease out the meaning from legal documents or spoken legal pronouncements. In building any theory of performance, it would be important not to ignore legal and bureaucratic language.

Other useful pieces of linguistic meta-theory are concepts developed by philosophers of language--particularly Austin's "speech acts" (Austin, 1962) and Grice's "cooperative principle" (Grice, 1975).

Speech act theory is particularly useful for describing the power of legal language and the use of language as a tool by the legal profession. Many legal pronouncements are <u>performatives</u>: when a judge pronounces a defendant guilty, he <u>is</u> guilty--whether or not he actually committed the crime. Written or spoken words within the correct context are used to create contracts--performance obligations--between people. A marriage license--a written legal formula--and the oral pronouncements of the proper legal authority joins two people in marriage. If a legal notice is published where a fairly large number of people can be assumed to see it, there is a presumption under the law that all people have been notified. This is in spite of the fact that most people do not read legal notices,

and probably would not understand them if they did read them. Most egregiously, in many jurisdictions if a person is missing for a certain number of years, a court can pronounce him or her dead, whether or not that is the case. For many purposes, a legally dead person is dead. It is no wonder that lawyers refer to their documents as legal instruments. But speech act theorists have not, in fact, looked at legal language as a whole. And so the theory does not take into account the existence of a variety of language that contains an extraordinary proportion of performatives. Perhaps such an investigation would require changes in the theory.

Grice's cooperative principle appears to be useful in explaining why legal language often does not work as communication. Because of other overriding functions of legal language, such as the performative function and the various social functions that it serves, legal language often does not follow Grice's maxims of Quantity and Manner. It is sometimes necessary for legal language to be more or less informative than is required for ordinary communication purposes, and it is sometimes either useful or customary for legal language to embrace obscurity of expression, to not be brief, and to not be orderly (e.g., questions on cross-examination are often presented in a random order to confuse the witness). As a result, legal language at times fails as communication for certain audiences.

But should these be considered violations of the Cooperative Principle? Or are they rather a manifestation of a different type

of principle of conversation, governing types of situations that Grice never took into account? Perhaps there exists, for some aspects of legal language, what Rosenbaum* has suggested be termed an "Uncooperative Principle": the use of language to constrain others from doing certain things, to protect people, information, or things, and to penalize others for violating the constraints and protections. Cross-examination appears to fit the "Uncooperative Principle" very well.

Legal language (and to some extent bureaucratic language) certainly does have additional conversational rules of its own, which govern lay persons as well as lawyers. In some cases, the lay person is ignorant of these rules, and lawyers and judges are aware of this ignorance. In other cases, courts (lawyers, judges) simply assume--for convenience's sake--that lay people know the "conversational rules" of the court when in fact they do not know them, and no allowance is made for this. Thus, if jurors do not understand a jury instruction, they often ask for it to be repeated, in the mistaken belief that the judge will then explain the instruction. In fact, following the legal rule of conversation that governs this situation, the judge will merely repeat the instruction.

Rules for turn-taking are different in courtroom "conversation" than in ordinary conversation. And even if witnesses are aware of the existence of different rules, they do not usually know what those rules are, and are either penalized or left at a disadvantage.

*Harvey Rosenbaum, 1981, personal communication.

Can linguistic theory account for these rules? And can linguistic theory explain what happens when two different sets of rules meet and conflict--as they do when a lawyer and a non-lawyer converse?

There are other open questions regarding legal and bureaucratic language in this area of linguistic theory. In general, it would be an interesting exercise to identify other meta-linguistic concepts and theories that could help describe or explain the workings of legal language and bureaucratic language.

* * * * * * * * *

I have presented only some of the areas where linguistic theories and legal and bureaucratic language intersect, and only a few of the many questions that remain unanswered. A fair amount is known, but there is much more to be investigated, and more to be learned--both about legal and bureaucratic language, and about what theoretical linguists can derive from the study of these varieties of exceptional language. As I have suggested, at least four areas of linguistic theory--historical linguistics, grammatical theory, sociolinguistics, and linguistic meta-theory--could benefit from the study of legal and bureaucratic language. Here is an opportunity for theoreticians to look beyond the standard language, and their own intuitions, in order to construct theories that more accurately reflect the real workings of language.

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